

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MAURICE DELEE,

Plaintiff,

v.

SERGEANT CHARLES W. HANNIGAN, et al.,

Defendants.

ORDER

09-CV-0838A(F)

This matter has been referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A)-(C). (Docket No. 10). The Court (Hon. Michael A. Telesca) had previously granted plaintiff permission to proceed *in forma pauperis* in this action and directed the Clerk of the Court to cause the United States Marshals Service to serve the summons and complaint on defendants. (Docket No. 6). To date, the only defendant upon whom service has not been effected is R.N. Esposito, whom the Court has been informed was not an employee of the New York State Department of Correctional Services at the time of the events alleged in the complaint. The first attempt at service on Esposito was made by mail, pursuant to Fed.R.Civ.P. 4(e) and N.Y.C.P.L.R. § 312-a, on or about April 9, 2010. No acknowledgment of service nor any other evidence of service having been "completed" has been docketed in this action.¹

Accordingly, the Court finds good cause, pursuant to Fed.R.Civ.P. 4(m), to extend the time to serve the summons and complaint on Esposito an additional 90 days, see

¹N.Y.C.P.L.R. § 312-a(b), which is the method of service the Marshal Service utilizes in this District, provides that service is not "complete" until the defendant returns the acknowledgment of service to the Marshals Service.

Murray v. Pataki, 09-1657-pr, 2010 WL 2025613, at *2 (2d Cir. May 24, 2010) (Summary Order) (once plaintiff identifies defendant, Marshal's failure to serve automatically constitutes good cause), and the Clerk of the Court is directed to cause the Marshals Service to serve the summons and complaint on Esposito at the last known address of Esposito's employer at the time of the events alleged in the complaint.

The Clerk of the Court is directed to complete and issue the summons and the Marshals Service's Process Receipt and Return Form (USM-285).

Defendant Esposito, pursuant to 42 U.S.C. § 1997e(g)(2), is directed to answer the complaint upon service.

SO ORDERED.



LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated:

June ^{24th} 2010
Buffalo, New York